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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,378

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Erik Nilsson

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02/18/2010

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EXAMINER

RUSH, KAREEN KAY

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,378	<b>Applicant(s)</b> NILSSON, ERIK	
	<b>Examiner</b> KAREEN RUSH	<b>Art Unit</b> 3781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/30/2007</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection. Regarding the arguments of the term parallelepipedal and the shape of the closure being pyramidal in shape, a change in form or shape is generally recognized as being within the level of one of ordinary skill in the art.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell (6206278), in view of *In re Dailey et al.*

Regarding claim 1, Cornell teaches a beverage packaging unit (Fig. 33) that includes an opening through which the beverage can be drunk (Fig. 34 the opening where member 926 is inserted into the beverage package). The beverage packaging unit comprises a packaging unit (Fig. 33) including a hollow box-like body (Fig. 33 about 935) having opposed planar walls (each wall is located on the opposite side of a wall and each wall has its own plane), a pair of opposed planar parallel sidewalls extending between the top and bottom walls and a closure element (Fig. 34 at 970). One corner of the hollow box-like body is

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beveled (Fig. 33 about 930B) to form a planar triangular surface at the one corner of the box-like body. A tubular part (Fig. 32 at 952) extends from the triangular surface and which includes an opening (Fig. 32 at 974). The closure element includes a cavity (Fig. 34 about 970) for receiving the tubular part. The packaging unit includes mutually co-acting fastener means (Fig. 32 about 972 and 958) on the tubular part and within the closure element cavity. The fastener means serves to removably retain the closure element on the tubular part so that when the closure element is connected to the packaging unit the box-like body and the closure element together form a package (Fig. 33). The reference as applied to claim 1 DIFFERS in that it does not explicitly teach a parallelepipedal packaging unit (which is formed when the closure is attached to the box), having a closure, which has a triangular base, having three edges, and triangular sides that extend from respective ones of the edges of the triangular base, and that the closure element is configured so that when the triangular base of the closure element is in abutment with the beveled corner of the box-like body it forms together with the box-like body the packaging and two of the triangular sides of the closure element are coextensive with respective sidewalls of the box-like body, and a third triangular side of the closure element is coextensive with the top wall of the box-like body. However, it has been held that a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have modified the reference as applied to claim 1 by employing a parallelepipedal packaging shape, in order to allow for a package which can have valuable stacking capabilities. *In re Dailey et al.*, 149 USPQ 47.

Regarding claim 2, the reference as applied to claim 1 teaches the beverage packaging unit. The closure element is rotatable relative to the tubular part (Fig. 32).

Regarding claim 3, the reference as applied to claim 1 teaches the beverage packaging unit. A tube (Fig. 32 at 920) that extends through the tubular part and down into the interior of the box-like body for beverage dispensing.

Regarding claim 5, the reference as applied to claim 3 teaches the beverage packaging unit. The tube is expandable at a location spaced outwardly (Fig. 34) from the tubular part.

Regarding claim 7, the reference as applied to claim 1 teaches the beverage packaging unit. The fastener means includes screw threads (Fig. 32 about 972 and 958).

Regarding claim 9, the reference as applied to claim 1 teaches the beverage packaging unit. The tubular part extends outwardly sufficiently from the triangular surface for a person to place his/her lips around the tubular part and drink from the box-like body (Fig. 31 about 950).

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Regarding claim 10, the reference as applied to claim 1 teaches the beverage packaging unit. The closure element is in sealing abutment with an outer end (Fig. 32 at 954) of the tubular part and with the triangular surface.

3. Claims 1, 3, 4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell (6206278), in view of *In re Dailey et al.*

Regarding claim 1, Cornell teaches a beverage packaging unit (Fig. 13) that includes an opening through which the beverage can be drunk (Fig. 13 about 354). The beverage packaging unit (Fig. 13) comprises a packaging unit (Fig. 13) including a hollow box-like body (Fig. 13 about 335) having opposed planar walls (each wall is located on the opposite side of a wall and each wall has its own plane), a pair of opposed planar parallel sidewalls extending between the top and bottom walls and a closure element (Fig. 13 at 356). One corner of the hollow box-like body is beveled (Fig. 12 about 352) to form a triangular surface (Fig. 12 about 310) on the box-like body. A tubular part (Fig. 13 at 354) extends from the triangular surface and which includes an opening (Fig. 13 about 354). The closure element includes a cavity (Fig. 13 about 360) for receiving the tubular part. The packaging unit includes mutually co-acting fastener means (Fig. 12 about 352) on the tubular part and within the closure element cavity. The fastener means serves to removably retain the closure element on the tubular part so that the box-like body and the closure element together form a parallelepiped (Fig. 13). The reference as applied to claim 1 DIFFERS in that it does not explicitly teach a parallelepipedal packaging unit (which is formed when

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the closure is attached to the box), having a closure, which has a triangular base, having three edges, and triangular sides that extend from respective ones of the edges of the triangular base, and that the closure element is configured so that when the triangular base of the closure element is in abutment with the beveled corner of the box-like body it forms together with the box-like body the packaging and two of the triangular sides of the closure element are coextensive with respective sidewalls of the box-like body, and a third triangular side of the closure element is coextensive with the top wall of the box-like body. However, it has been held that a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the reference as applied to claim 1 by employing a parallelepipedal packaging shape, in order to allow for a package which can have valuable stacking capabilities. *In re Dailey et al.*, 149 USPQ 47.

a. Regarding claim 3, the reference as applied to claim 1 teaches the beverage packaging unit. A tube (Fig. 13 at 354) that extends through the tubular part and down into the interior of the box-like body for beverage dispensing.

Regarding claim 4, the reference as applied to claim 1 teaches the beverage packaging unit. A tube (Fig. 13 at 320) extends through the tubular part down to a bottom (Fig. 13 about 320) of the box-like body.

Regarding claim 6, the reference as applied to claim 1 teaches the beverage packaging unit. The fastener means includes a snap-lock connection (column 7, lines 3-5).

Regarding claim 8, the reference as applied to claim 3 teaches the beverage packaging unit. An outer end of the tube includes a snap lock (column 7, lines 3-5) that co-acts with the closure element to serve as a connection (Fig. 12 about 352).

### ***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Xuan reference discloses a beverage package having a straw. The Chang reference discloses a package having a drinking straw. The Perryman reference discloses a package having a drinking straw. The Murphy reference discloses a package having a drinking straw. The Iodice reference discloses a package having a drinking straw. The D'Alonia reference discloses a package having a drinking straw. The Bettel reference discloses a package having a drinking straw. The Gu reference discloses a package having a drinking straw. The Theobald reference discloses a package having a drinking straw. The Cone reference discloses a package having a drinking straw.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREEN RUSH whose telephone number is (571)270-5611. The examiner can normally be reached on Monday-Friday (8:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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